planning purposes, a practice opposed by AT&T and MCI because it might reveal their strategies for entering the market. Id. at 103.

The Board found for the CLECs on the issue of interconnection location, reasoning that allowing them to choose the most efficient points at which to exchange traffic with ILECs would lower their costs of transport and termination of traffic and better position the CLECs to compete. Generic Order at 103, citing First Report and Order ¶ 172. The Opinion further states that the "Board envisions one IP per LATA. Should a CLEC for any reason require more than one IP per LATA the charges must be agreed to by the parties or developed through the dispute resolution process. . . ."

AT&T argues that the Board's decision limits interconnection to one IP per LATA and therefore violates the Act, which doesn't limit the number of interconnection points. AT&T contends that this limitation runs contrary to its right as a CLEC to interconnect at *any* technically feasible point, and will prevent it from designing the most efficient network to provide service.

This Court disagrees. Had the Board wanted to limit interconnection it could have used specific language to that effect; it chose instead to say that the Board "envisions" one connection per LATA, suggesting rather than directing. The language at page 104 stating that "at this time, the Board will not *require* additional points of interconnection" (emphasis added), might appear limiting. But, read in context of the complete sentence, which goes on to say that the Board "will permit the ILECs and CLECs, through their own negotiations process and agreements, to dictate additional points of interconnection," the decision complies with 47 U.S.C. § 251(c)(2)(B), requiring competitor interconnection at "any technically feasible point." So the Court concludes

that the decision permits competitors to interconnect at multiple points per LATA, as many as necessary to create the most efficient network.[2] Indeed, any other conclusion would violate the Act.

It appears that the true gravamen of what concerns MCI and AT&T on this issue is not that they will be physically limited to one interconnection point per LATA (as discussed, they are not), but that they will be required to pay for each interconnection point established. By requiring the incumbent to pay for any change in the CLEC's requested location point but stating that "the CLEC is responsible for its share of the cost of any additional IP," Generic Order at 104, the Board requires the CLEC to negotiate and pay for interconnection as a one time, non-recurring connection fee. MCI and AT&T may oppose such a charge, but the Court cannot say that the Board is without authority to require one. Although the Act mandates that competitors be allowed to connect to the incumbent's network at any technically feasible point, such access is not free; rather it must be provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory" 47 U.S.C. § 251(c)(3). The cost is set through the negotiation and arbitration process, and as such it is premature for this Court to address it at this time. As the Court interprets the Board's Order, CLECs are not limited in the number of interconnection points per LATA and the Board's decision in this respect is affirmed.

6. Directory Assistance

Because original FCC regulations designate directory assistance (DA) as a network element that must be unbundled to competitors, the Board in its original generic Order required

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[2] Multiple interconnection points per LATA are also inherent to the FCC's decision to mandate subloop unbundling as discussed in the Third Report and Order.

Bell to provide CLECs with the ability to read information in Bell's DA database. This "read only" access would allow CLEC operators looking for a number to query the ILEC database, for a fee. The Board found that the FCC regulations required access to the information in Bell's database, but not in electronic or magnetic form (i.e., a physical database for the CLEC's own use).

Thereafter, MCI moved the Board for reconsideration of the decision based on new evidence, to wit that Bell had developed the technology to provide CLECs with an electronic form of the DA information, called a "database dump." A database dump provides the CLEC with the same DA information in a format that can be incorporated into the CLEC's own database. This means the CLEC would no longer have to query the ILEC database for each number sought, eliminating the fee. This "new evidence" came from the local competition proceedings in Virginia, where Bell-VA ultimately provided MCI with a database dump of its DA information and charged a fee for daily updates. The Board found that Bell was itself already using the "dumping" technology itself to provide Call 54 service, which allows a customer to find a name and address with only a phone number. Because 47 C.F.R. §51.319 requires ILECs to provide non-discriminatory access to telephone numbers equivalent to the access it provides to itself, the Board reconsidered its original decision and ordered Bell to provide MCI with the DA information in electronic form with updates.

Bell now asks for review of the Order on reconsideration. While the petition was pending before the Court, MCI and Bell reached a settlement in which Bell would provide the DA database dump to MCI with daily updates. MCI and Bell revised their interconnection agreement to reflect this arrangement, and the Board approved the revised agreement on June 9,

1999. At oral argument Bell represented that it would offer the same service to all requesting carriers in New Jersey. Indeed it must, according to § 251(c)(3) of the Act, which requires CLECs to provide access to elements to all ILECs on a non-discriminatory basis. Even if Bell had not reached agreement with MCI, the Court would have to uphold the Board's decision requiring the database dump because 47 US.C. §252(e)(3) gives states the authority to impose unbundling requirements beyond those mandated by FCC regulations. Furthermore, during the pendency of this litigation the FCC has revised 47 CFR §51.217 to require that ILECs provide DA databases in electronic form. Because Bell has voluntarily chosen to provide all requesting competitors with a DA database dump, its appeal of the Board's decision which required them to do so is moot.

C. Pricing Issues

Pricing issues, not surprisingly, raised the most heat in the disputes among the parties in this litigation. The accurateness of the Board's generic rates is particularly important to creating competition in New Jersey. Although the Board has stated that the parties are free to negotiate for rates other than the generic rates, the incumbent would never have incentive to negotiate if generic rates are inflated or inaccurate. As Bell did following the AT&T arbitration, they may simply refuse to negotiate or sign any arbitrated agreement and be guaranteed the generic rates as a fallback or floor. The parties' focus on the pricing issue reflects this reality.

AT&T and MCI charge that Bell's pricing model was developed using historic costs and that the Board erred in giving weight to Bell's model in developing its generic rates because the Act requires that rates be determined on forward looking costs, rather than historic or embedded costs of incumbents. See 47 C.F.R. §51.505 (implementing 47 U.S.C. § 252(d)); First Report

and Order ¶ 694. As discussed *supra*, the generic rates adopted by the Board constitute factual findings which are subject to deference and will be examined under an "arbitrary and capricious" standard, requiring a rational connection between the facts found and the decision rendered. Motor Vehicle Mfrs. Ass'n. V. State Farm Mut., 463 U.S. 29, 43 (1983). If the agency's decision was based on the relevant factors and a reasonable basis exists for its decision, then the Court should uphold the agency's factual findings.

Some background on rate setting is appropriate. "TELRIC," or Total Element Long Run Incremental Cost, was the method adopted by the FCC in its Local Competition Order as the method by which states would set forward looking, competitive rates for network elements. See First Report and Order ¶620. In a competitive market, the actual price of a good or service will tend toward its long-run, incremental cost. Id. at ¶ 675. Thus, costs calculated according to the TELRIC methodology mimic those costs that an efficient company, constrained by competitive market forces, would incur in providing the requested network element. See MCI Telecomms. Corp. v. Pacific Bell, No. C 97-0670 SI, slip op. at 6 (N.D. Cal. Sept. 29, 1998). Historic or embedded costs represent past investments and costs that a firm has already incurred, and the TELRIC method does not permit consideration of these costs. See Bell-Atlantic-DE v. McMahon, et al., C.A. No. 97-511-SLR, slip op. at 43 (D. Del. Jan. 6, 2000). The cost of an element under the TELRIC method "should be measured based on the use of the most efficient telecommunications technology currently available and the lowest cost network configuration, given the existing location of the incumbent LEC's wire centers." 47 C.F.R. §51.505(b)(1).

The generic proceedings produced an extensive record, covering 25 days of hearings, 62

expert witnesses, 93 pieces of written testimony, 300 exhibits and over 5,000 pages of transcripts. Generic Order at i. The Board had to process all of this information and sift out from it rates that would be consistent with both the Act and FCC regulations. This was a formidable task indeed, and resulted in a 262 page comprehensive opinion covering the historical context of local phone competition, the legal requirements of the Act, the procedural history of both the arbitrated agreements and the generic proceedings, and finally the rates and technical requirements adopted by the Board and the record on which those decisions were made.

In this reasoned and painstakingly thorough decision, the Board demonstrates its proficiency in both pricing and technical issues by walking through each of the pricing models produced in the generic proceeding, highlighting the strengths and weaknesses of each, and ultimately rejecting all the models. But despite the vast amount of information before it, and despite the Board's obvious mastery of the complex subject matter before it, the Board chose to blend the models on a ratio of 60% weight to Bell's proposed prices and 40% weight to AT&T/MCI proposed prices across the board, rather than set its own pricing to reflect the specific deficiencies in each model or request that the parties correct their models. The Board reasoned that this weighting approach discounted the flaws while retaining the acceptable aspects of the various models. Generic Order at 70. The Board applied this approach to both recurring network elements, id. at 76, and non-recurring network elements (one time fees predominantly associated with switching carriers). Id. at 100.

The Court acknowledges that the Board was faced with a difficult task, and accepts the Board's position that it was presented with two models that were both inherently flawed and pressured by a federal mandate to expedite local service competition. There is a certain common

sense in the Board's decision to weight the models rather than request new models or search for the "perfect model," which has thus far eluded even the FCC. There is much appeal in the argument that salvaging the best parts of each model would save time and get competition started.

But when the Board has the expertise and resources it does, adopting a fallback position like splitting the difference is in the end, a simplistic a way of resolving a complex problem. The assignment of percentage ratios to the models as a whole is nothing more than a rough estimate of which model was "more wrong" than the other. The Board gave no articulated, rational connection between the problems with the models and its decision to weight them on a 60/40 basis, as opposed to, say, a 50/50, a 30/70 or a 45/55 basis. Nor does the Board explain why weighting was applied evenly to all elements collectively. Inevitably, as AT&T and MCI have argued, this approach created uneven, even harsh consequences.

The most illustrative example of this problem exists in the non-recurring element charges. On page 99 of the Board's Generic Order are listed selected non-recurring elements, including proposed rates for service orders and installations. These are the costs associated with switching customers from one provider to another. AT&T/MCI proposes that service orders for all loops, ports or combinations be set at a rate of $0.92 per order, while Bell proposes the rate be set at $26.54 per order. The divergence arises from a fundamental difference in the way the companies propose to complete the service order function. The Bell model presumes manual order servicing, and the rate reflects the number of minutes to complete the function multiplied by the applicable labor rate for the person performing the function. Id. at 96. The AT&T/MCI rate presumes a fully mechanized service order process, and charges only "the cost to provide the

Additional Charges and Credits page in the bill." Id. at 98. The Board was faced with a clear choice of whether the most efficient network design for a company desiring to enter the local service market would include manual or mechanized order processing. Rather than choose, the Board threw up its figurative hands and seized on the 60/40 split. As a result, the rate adopted is not rationally related to the cost of a manual system, nor is it related to the cost of a mechanized system; it represents no real or tangible cost calculation at all.

Another example can be seen in the generic switching rates. The Board acknowledged that the Hatfield model and the Bell model had fundamentally different assumptions, which affected each party's proposed switching rates. The Hatfield model assumes that to create the most efficient network today, a company would construct the network using all new switches, which are less expensive on a per line basis and are provided at a larger discount than add-on capacity, that is, line cards added once the switch has reached its maximum capacity. Generic Order at 85. The Bell model assumes a 40/60 percentage mix of new switches to add-on capacity. Id. at 86. As a result, the Hatfield model calculates end-office switching at $1.06 per line per month, versus the Bell model's proposed rate of $3.17 per line per month, and a per minute usage cost of $0.0019 (Hatfield) to $0.010234 (Bell) – more than five times as much per minute. Rather than address the question of whether a market entrant would use all new switching or a mix of new and add-on capacity, the Board simply weighted the results 60/40, and again the result cannot be said to represent the actual tangible cost of any network.

These are but two rate examples of many where, faced with the prospect of making real choices on what an efficient network would look like if constructed today, the Board applied its 60/40 solution. In effect, what we have is agency compromise rather than agency decision

making. Examining the results and recognizing the Board's decision-making obligations, the Court finds assignment of numeric percentages to models the Board concluded were flawed amounts to arbitrary and capricious rule making.

This conclusion means the Board must individually evaluate the recurring rates for not only the basic network elements (including the local loop and its subloop components, end office switching elements, signaling elements, transport and termination elements) but rates for more than 100 other network elements, including both recurring and non-recurring charges listed in Attachment 1 of its Generic Order. But nothing in the Act suggests that the Board's legal obligation to set rates consistent with the Act can be accomplished without such evaluation, and moreover, when the Board undertook to go the distance and hold generic proceedings, it presumably contemplated as much.

Whether the Board intends to hold new hearings, or simply recalculate the rates based on data previously provided by the parties in the generic proceeding is a decision it must make. The Board may choose to adopt prices on an item by item basis from whichever model is more accurate on a particular item, or assign its own value to an item where all models are inaccurate. Should a blending of some proposed prices make sense, as in the case where the parties' rates are not severely disparate and are arrived at using the same underlying assumptions, such weighting as the Board chooses can vary from item to item, more rationally reflecting the specific deficiencies of any one model. The Board must also incorporate any relevant new information or data regarding input values and prices that have been addressed by the FCC in Orders published since the filing of this case.

Additionally, the Court finds the Board's decision to adopt Bell's proposed non-recurring

rates carte blanche as the only model presented is contrary to evidence in the record and so is arbitrary and capricious. AT&T and MCI did submit evidence to undermine Bell's proposed non-recurring rates in the form of expert testimony given by Terry Murray, who attached proposed rate tables to her report at JA10347. Because the Board is obligated to ensure just and reasonable rates under § 252(c)(1) and must consider the "best information available" under § 252(b)(4)(B), the Board must address this evidence and determine whether Bell's proposed rates for one time charges are accurate or whether they need to be adjusted. This was appropriate when the Board decided not to adopt AT&T's arbitrated rates for recurring elements based solely on the Hatfield model, and it is appropriate at this juncture as well.

Although the parties briefs challenge the rates for various other specific elements, it would be premature at this time for the Court to address each of these issues in light of the decision to remand the rate issue to the Board. This leaves the matter of the inputs to the formulas which the Board used in determining rates, which are strongly challenged.

The four cost models considered by the Board in the generic proceeding "clearly demonstrate[d] that there [were] differences in the basic mechanics and methodologies of the models presented." Generic Order at 13. But when similar inputs were used, the models produced roughly the same results. Id. Therefore, the inputs are "equally important as the structures of the individual models themselves. . . . [C]ertain inputs had a more dramatic effect on the resulting costs than did others." Id. at 27. In determining generic rates the Board identified four inputs critical to the development of costs: depreciation rates, common cost factor, weighted cost of capital and fill factor for distribution and feeder cables. The Board directed each party to run its cost model several times, using Board specified amounts for each of the four

inputs. The hope was that the use of uniform inputs would bring the varied results of the studies more in line with each other and highlight any deficiencies in the defaults or assumptions built into each particular model. Id. at 31.

Of these four input factors identified by the Board, only one is specifically contested before this Court – the fill factor for distribution cables.[3] The "fill factor" is

> the percentage of working cable pairs to the total number of pairs installed in a network. For example, if there are 900 working circuits on a 1200 pair cable the fill factor is said to be 75% (900/1200). The choice of fill factors directly impacts the selection of the appropriate cable size and hence the investment required to build and design the network. Fill provides spare capacity for future growth as well as replacement of defective pairs. Even the most efficiently designed networks require some level of fill.

Generic Order at 31. Fill factors are different depending on the types of cable, copper feeder cable, fiber optic feeder cable, or distribution cable. The Board found that none of the models was significantly different in its proposed fill factors for copper feeder cable, which ranged from a 65% fill factor to an 85% fill factor, and so ordered that the parties assume a 75% fill factor. The difference was even less with respect to fiber optic feeder cable, for which the parties proposed fill factors between 80% and 85%. This is so because fiber optic cable's capacity can be enhanced simply by adding more electronics at the cable's end, without the need to install additional cable. The Board adopted the 85% fill factor for fiber optic cable. The parties do not contest the Board's fill factors for either copper feeder cable or fiber optic cable.

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[3] Although AT&T contest the inputs generally, the only specific inputs it contests are the inclusion of broadband capacity in perloop rates, switching costs, and fill factors. MCI also contests switching costs and fill factors. Switching costs generally have been addressed *supra*, and fill factors are addressed *infra*. As for the issue of including broad band capacity in the loop rate, the Court's decision to remand all element rates to the Board for further proceedings makes more specific review premature. To the extent that AT&T challenges Bell's inputs for common costs and depreciation rates the argument is inapposite because the Board specifically rejected the Bell model costs for each. See Generic Order at 73 and 75.

The range of values was far greater with respect to distribution cable, or that portion of the local loop that connects an individual customer's premises to the network. The Bell model assumed a fill factor of only 30%, while the competitor models proposed fill factors consistent with one another but higher than Bell's, ranging from about 50% to 80% (depending on density). Bell admitted that the 30% fill factor was based, in part, upon its actual levels of fill, developed through prudent engineering practices that balanced the Company's need to conserve capital with its obligations to provide reliable service throughout the state. Id. at 51. It also stressed the need to maintain a sufficient level of reserve capacity to provide service to a constantly changing market place. Id.

The competitors, on the other hand, maintained that no efficient, forward looking company would install a reserve capacity that is more than double its current usage. To simplify their argument, a company recoups the costs of installing lines by charging for their use, and the more lines that are installed but not used, the greater the charge must be per used line to recoup the total cost of installation. Leasing lines from Bell paid on the basis of its 30% fill factor rewards Bell for an inefficient fill level, and forces competitors to pay much more per loop than if they constructed their own networks with higher fill factors. Therefore, to remain competitive from an economic viewpoint, competitors argue that a fill factor should produce enough spare capacity to allow for growth, but not so much as to place an undue economic burden on them. Id. at 80.

Ultimately the Board adopted a 30% fill factor, deciding that

> economic principles should [not] over-ride sound engineering practices. BA-NJ has historically used average distribution fill factors equivalent to 30%. . . . The Board is persuaded . . . that this level of fill is appropriate when designing its network to balance the economic trade-off between installing additional capacity

> at the time of an initial installation rather than re-installing additional facilities in the future. For distribution plant especially, the costs of having to disrupt improved areas (e.g., open streets, sidewalks, lawns, etc.) must be weighed against the minimal cost of placing a larger cable at the time of an initial installation. The Board concurs with BA-NJ that its fill factors are the product of these real world economic conditions and thus reflect an efficient forward-looking level of fill.

While the Board refers to the 30% fill factor as a "sound engineering practice," it calls it so only because this is Bell's past practice. The Board does not demonstrate rational relationship between the 30% fill factor and an efficient network. It appears instead to accept unquestioningly Bell's assertion that its fill factor is essential to its obligation to complete service orders within five days as required by state statute. Nor does the Board address the argument made by MCI that disruption of improved areas, something pressed for by Bell as a reason for its fill factor, is a hypothetical horrible because distribution loops are more likely to be aerial. Generic Order at 55 and testimony of Joseph H. Weber, January 28, 1997, p.m. Tr. at 106)("overwhelming majority" of Bell's plant is aerial). The Board does not even give lip service to the possibility of covering such concerns with a 35%, 40% or 50% fill factor. More is required from the Board when one considers that CLECs must pay 3 times over for a distribution loop on a 30% fill basis. See testimony of Joseph H. Weber, January 28, 1997, p.m. Tr. at 38-42).

In making this observation, the Court is not saying that 30% could never be an appropriate fill factor; but for the Board to reach this conclusion, it must do so for better articulated reasons than it has here. Past practice alone, without some more tangible measurement relating it to an efficient, forward looking system cannot be the basis for setting forward-looking rates as required by the Act. To do so is inconsistent with 47 U.S.C. § 252(d) and the TELRIC approach established by the FCC, and so the Board's decision on distribution

cable fill factor is remanded for further proceedings consistent with this Opinion.

VI. Conclusion

Competition in local telecommunications is new and unfamiliar territory. Incumbents, competitors, and state utility boards alike struggle to make and co-exist on a level playing field for market entrants, while at the same time adapt to and account for technology developments, those that are expected and those that are not. The process is difficult and uncomfortable, but the legislative mandate is clear. To the end of achieving compliance with the Act and framing this Court's remand, a summary of the Court's rulings is found in the attached Order.

Dated: 6.2.00

KATHARINE S. HAYDEN, USDJ

12BB SCHEDO
APPEAL

U.S. District Court
District of New Jersey (Newark)

CIVIL DOCKET FOR CASE #: 97-CV-5762

AT&T COMMUNICATIONS v. BELL ATLANTIC-NEW JE, et al Filed: 11/24/97
Assigned to: Judge Katharine S. Hayden
Demand: $0,000 Nature of Suit: 890
Lead Docket: None Jurisdiction: Federal Question
Dkt# in other court: None

Cause: 28:1331 Fed. Question: Interstate Commerce Act

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CARMEN J. ARMENTI, in their capacities as Commissioners of the Board of Public Utilities defendant	EUGENE P. PROVOST (See above) [COR LD NTC]

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: 24/97	1	COMPLAINT filed FILING FEE $ 150.00 RECEIPT # 244557 (dr) [Entry date 12/03/97]
11/24/97	2	NOTICE of Allocation and Assignment filed. Magistrate G. DONALD HANEKE (dr) [Entry date 12/03/97]
12/3/97	--	SUMMONS(ES) issued for BELL ATLANTIC-NEW JE, NEW JERSEY BOARD OF, HERBERT H. TATE, CARMEN J. ARMENTI (20 Days) (Mailed to Counsel) (dr)
12/24/97	3	APPLICATION by BELL ATLANTIC-NEW JE and Clerk's Order extending time to answer. Answer due 1/22/98 for BELL ATLANTIC-NEW JE (DD) [Entry date 12/29/97]
1/8/98	4	APPLICATION by NEW JERSEY BOARD OF, HERBERT H. TATE, CARMEN J. ARMENTI and Clerk's Order extending time to answer. Answer due 1/22/98 for CARMEN J. ARMENTI, for HERBERT H. TATE, for NEW JERSEY BOARD OF (bl)
1/12/98	5	AMENDED COMPLAINT by AT&T COMMUNICATIONS , amending [1-1] complaint (bl) [Entry date 01/16/98]
1/21/98	6	ORDER, set scheduling conference for 2/17/98 (signed by Mag. Judge G. D. Haneke) (bl) [Entry date 01/22/98]
1/23/98	8	APPLICATION/motion for extension of time to answer complaint, ailb cert. of service (P/O subitted to chambers) (bl) [Entry date 01/27/98]
1/26/98	7	Notice of Intent to submit a Dispositive motion by BELL ATLANTIC-NEW JERSEY (bl) [Entry date 01/27/98]
1/26/98	10	Notice of Intent to submit a Dispositive motion by BELL ATLANTIC-NEW JERSEY (bl) [Entry date 01/28/98]
1/27/98	9	CERTIFICATE OF SERVICE by State of N.J. of Consent Order for intervention (bl) [Edit date 01/27/98]
1/29/98	11	CONSENT ORDER, intervening by State of New Jersey Division of Ratepayer Advocate (signed by Judge Joseph A. Greenaway, Jr.) (bl) [Entry date 02/02/98]
3/6/98	12	Notice of MOTION for Christopher J. White to appear pro hac vice by STATE OF NEW JERSEY, Motion hearing set for 4/13/98 on [12-1] motion silb and affidavit of service . (PO Subm) (bl) [Entry date 03/11/98]
3/12/98	13	ORDER, set scheduling order deadlines: Dispositive Motion due on or before 5/14/98 by NJBPU PER LOCAL RULE 7.1(f); and staying action pending motions for reconsideration dated 2/2/97 in BPU Docket No. TX95120631, etc. (signed by Judge Joseph A. Greenaway, Jr.) (bl) [Entry date 03/16/98]

3 2/98	14	Minute entry: Proceedings recorded by Ct-Reporter: none; Minutes of: 03/12/98; The following actions were taken, telephone conf, order filed By Judge Joseph A. Greenaway, Jr. (tw) [Entry date 03/17/98]
4/13/98	15	Minute entry: Proceedings recorded by Ct-Reporter: none; Minutes of: 4/13/98; The following actions were taken, [12-1] motion for Christopher J. White to appear pro hac vice taken under advisement, per Rule 78. By Mag. Judge G. D. Haneke (bl)
4/22/98	16	ORDER granting [12-1] motion for Christopher J. White to appear pro hac vice (signed by Mag. Judge G. D. Haneke) (bl) [Entry date 04/23/98]
5/14/98	17	CONSENT ORDER extending time for defts. Brd. of Comm. to file a motion to dismiss thru 5/18/98, etc. (signed by Judge Joseph A. Greenaway, Jr.) (bl) [Entry date 05/15/98]
6/19/98	18	Notice of MOTION for Monica Otte and Frederick Pappalardo to appear pro hac vice by AT&T COMMUNICATIONS, Motion hearing set for 7/13/98 on [18-1] motion cilb and cert. of service . (PO Subm) (bl) [Entry date 06/22/98]
7/10/98	19	ANSWER to Complaint and COUNTERCLAIM by BELL ATLANTIC-NEW Jersey, Inc. and crossclaim against co-defts. (bl) [Entry date 07/13/98]
7/13/98	20	ORDER granting [18-1] motion for Monica Otte and Frederick Pappalardo to appear pro hac vice (signed by Judge Joseph A. Greenaway, Jr.) (bl) [Entry date 07/15/98]
7/13/98	21	ANSWER by NEW JERSEY BOARD OF, HERBERT H. TATE, CARMEN J. ARMENTI to amended complaint (bl) [Entry date 07/15/98]
7/13/98	22	CERTIFICATE OF SERVICE by NEW JERSEY BOARD OF, HERBERT H. TATE, CARMEN J. ARMENTI of answr to amended complaint (bl) [Entry date 07/15/98]
7/17/98	23	Minute entry: Proceedings recorded by Ct-Reporter: none; Minutes of: 7/16/98; The following actions were taken, STATUS CONFERENCE; disposive motion schedule; papers to be exchanged by 9-18-98, opposition by 1-13-98 reply papers to be exchanged and motions filed by 12-11-98, Oral argument scheduled for 4-5-99. By Judge Joseph A. Greenaway, Jr. (bl) [Entry date 07/20/98]
7/28/98	24	ANSWER by NEW JERSEY BOARD OF, HERBERT H. TATE, CARMEN J. ARMENTI to crossclaim of Bell Atlantic-N.J. Inc. (bl) [Entry date 07/29/98]
7/29/98	25	CERTIFICATE OF SERVICE by BELL ATLANTIC-NEW JERSEY of answer to crossclaim (bl) [Entry date 07/30/98]

0/98	26	ANSWER by AT&T COMMUNICATIONS to [19-2] counter claim (bl [Entry date 07/31/98]
8/3/98	27	SCHEDULING ORDER/Case management Order setting 8/14/98 as a date for Joint index record, etc. (signed by Judge Joseph A. Greenaway, Jr.) (bl) [Entry date 08/04/98]
9/21/98	28	Notice of Intent to submit a Dispositive motion by STATE OF NEW JERSEY/ Ratepayer Advocate, pltf-Intv. (bl) [Entry date 09/22/98]
11/13/98	29	Case Mangagement SCHEDULING ORDER #2 setting dates previously set. (signed by Judge Joseph A. Greenaway, Jr.) (bl)
12/1/98	30	ORDER of reassignment from Judge Greenaway, Jr. to Judge Hayden (signed by Chief Judge Anne E. Thompson) (bl) [Entry date 12/09/98]
12/9/98	--	CASE reassigned to Judge Katharine S. Hayden (bl)
1/5/99	31	Notice of MOTION for leave to file amicus curiae brief by FEDERAL COMMUNICATIONS COMMISSION, Motion set for 2/8/99 on [31-1] motion and cert of service . (Brief/PO Subm) (bl) [Entry date 01/06/99]
1/5/99	32	NOTICE of attorney appearance for FEDERAL COMMUNICATIO by DAVID T. ZARING (bl) [Entry date 01/06/99]
1/25/99	33	SCHEDULING/CASE MANAGEMENT ORDER No. 4 directing that any party wishing to respond to brief of FCC as amicus curiae shall do so in responsive brief to be served on all ptys by 1/29/99; directing that unless otherwise stated or specifically amended all other Case Management order provisions remain in full force and effect (signed by Judge Katharine S. Hayden) (tw) [Entry date 01/27/99]
2/2/99	34	Notice of MOTION for James F. Bendernagel, Jr. Esq. to appear pro hac vice by AT&T COMMUNICATIONS, Motion set for 3/8/99 on [34-1] motion cilb and cert. service . (PO Subm) (bl) [Entry date 02/03/99]
2/22/99	35	Minute entry: Proceedings recorded by Ct-Reporter: none; Minutes of: 2/22/99; The following actions were taken, [31-1] motion for leave to file amicus curiae brief taken under advisement, per rule 78. By Judge Katharine S. Hayden (bl) [Entry date 02/26/99]
3/3/99	38	Minute entry: Proceedings recorded by Ct-Reporter: none; Minutes of: 3/3/99; The following actions were taken, PHONE CONFERENCE HELD ON THE RECORD. By Mag. Judge Stanley R. Chesler (entered in wrong docket) (bl) [Entry date 03/09/99] [Edit date 03/30/99]

/99	36	ORDER granting [34-1] motion for James F. Bendernagel, Jr. Esq. to appear pro hac vice (signed by Mag. Judge Ronald J. Hedges) (bl) [Entry date 03/09/99]
3/8/99	37	Minute entry: Proceedings recorded by Ct-Reporter: none; Minutes of: 3/8/99; The following actions were taken, [34-1] motion for James F. Bendernagel, Jr. Esq. to appear pro hac vice taken under advisement By Mag. Judge Ronald J. Hedges (bl) [Entry date 03/09/99]
3/19/99	39	CERTIFICATE OF SERVICE by STATE OF NEW JERSEY of Surreply brief in support of the Ratepayer Advocate's Motion for Summary Judgment (bl) [Entry date 03/22/99]
3/25/99	40	Notice of MOTION for summary judgment on Ct. 1 of amended complaint by STATE OF NEW JERSEY, Motion set for 5/10/99 on [40-1] motion and evidence of service . (Brief/) (bl) [Entry date 03/26/99]
6/10/99	41	ORDER granting [31-1] motion for leave to file amicus curiae brief (signed by Judge Katharine S. Hayden) (bl) [Entry date 06/11/99]
6/15/99	42	Minute entry: Proceedings recorded by Ct-Reporter: Ralph Florio; Minutes of: 6/15/99; The following actions were taken, [40-1] motion for summary judgment on Ct. 1 of amended complaint taken under advisement By Judge Katharine S. Hayden (bl) [Entry date 06/16/99]
8/27/99	43	TRANSCRIPT of Proceedings taken on 6/15/99 (bl) [Entry date 08/30/99]
2/10/00	44	LETTER to Judge Hayden with apendix re Bell & MTI Priceing and Testimony (bl) [Entry date 05/03/00]
6/6/00	45	OPINION (signed by Judge Katharine S. Hayden) (bl)
6/6/00	46	ORDER affirming decision to rbitrate rates, decision to deny to way trunking, reversing and remanding, affirming Board's decision re number of interconnection points per Lata; mooting challenge to Board's decision on electronic database; reversing Board's decision to require dark fiber, reversing Boad's decision to set rates based 60% on Bell mode and 40% on Hatfield model; and remanding customer specific pricing agreements and fill factors. n.m. (signed by Judge Katharine S. Hayden) (bl)
6/26/00	--	Case closed (bl)

6 0/00	47	NOTICE OF APPEAL filed at 1:00 p.m. by (counsel for pltf) STATE OF NEW JERSEY Re: [46-1] order and [45-1] opinion. Fee Status: $105.00; Receipt No. 282999. Copies of notice of appeal sent to Clerk, USCA and Attorney(s): DAVID T. ZARING, SUSAN C. CASSELL, CHRISTINE DOLORES PETRUZZELL, FREDERIC K. BECKER, HEIKKI LEESMENT, EUGENE P. PROVOST, GARY A. GREENE (DS)
7/7/00	48	NOTICE of Docketing ROA from USCA Re: [47-1] appeal USCA NUMBER: 00-2000 (DS)
7/14/00	65	Transcript Purchase Order filed indicated transcript(s) unncessary for appeal purposes; appeal [47-1] (DS) [Entry date 07/18/00]
7/17/00	49	Copy of LETTER form Samul Maulthrop, Esq. on behalf of AT&T re proceudre for presentation of issues. (Orig. fld. 5/5/99 in 98-0109) (bl)
7/17/00	50	Copy of LETTER to Judge Hayden from Eugene Provost, DAG forwarding Bd. of Public Utilities 6/9/99 Order in dockets TX9510631 and TO9608621 for inclusion in the record. (Orig. fld. in 98-109 on 6/11/99) (bl)
7/17/00	51	Copy of LETTER to Judge Hayden from David Zarin Esq. of DOJ on behalf of the FCCre application of pricing methodology. (orig. fld. in 98-0109 on 7/13/99) (bl)
7/17/00	52	Copy of LETTER to JUDGE HAYDEN FROM JAMES BENDERNAGEL JR. Esq. on behalf of AT&T addressing a statement made in the DOJ's 7/13/99 letter. (orig. fld in 98-109 on 7/21/99) (bl)
7/17/00	53	Copy of LETTER to Judge Hayden from Frederic Becker, Esq. on behalf of Bell Atlantic-New Jersey responding to AT&T INTERPRETATION OF FCC order. (orig. fld. 98-109 on 7/29/99) (bl)
7/17/00	54	Copy of LETTER to Judge Hayden from Christopher White, Esq. on behalf of Ratepayer Advocate advising of citation correction. (Orig. fld. on 98cv109 on 8/10/99) (bl)
7/17/00	55	Copy of LETTER to Judge Hayden from Eugene Provost, DAG responding to recent submission of AT&T. (Orig. fld. in 98-109 on 8/11/99) (bl)
7/17/00	56	Copy of LETTER to Judge Hayden from Frederic Becker, Esq.in response to Ratepayer Avocate's 8/10/99 submission. (orig. fld. in 98-109 on 8/12/99) (bl)
7/17/00	57	Copy of LETTER to Judge Hayden from James Laskey Esq. on behalf of MCI bringin recent ruling to Court's attention. (orig. fld in 98-109 on 10/15/99) (bl)

7/00	58	Copy of LETTER to Judge Hayden from Frederic Becker in response to MCI's letters of 10/15/99 and 11/30/99, missing 11/30/99 letter. (Orig. fld. 98-109 on 12/3/99) (bl)
7/17/00	59	Copy of LETTER to Judge Hayden from Eugene Provost, DAG responding to two questions raised by law clerk, Karen Shelton. (orig. fld in 98-109 on 2/7/00) (bl)
7/17/00	60	Copy of LETTER to Judge Hayden from James Bendernagel,Jr. Esq. on behalf of AT&T bringing a decision of the USDC for the Dist. of Delaware to the Court's attention. (orig. fld. 98-109 on 2/9/00) (bl)
7/17/00	61	Copy of LETTER to Judge Hayden from Frederic Becker Esq. on behalf of Bell Atlantic-New Jersey in response to AT&T's 2/9/00 submission of decisions. (orig. fld. in 98-109 on 2/22/00) (bl)
7/17/00	62	Copy of LETTER to Judge Hayden from Jodie Kelley Esq. on behalf of MCI in response to the 2/7/00 submission on behalf of the Board of Public Utilities. (orig. fld. in 98-109 on 2/25/00) (bl)
7/17/00	63	Copy of LETTER to Judge Hayden from Eugene Provost, DAG re: Brd. of Public Utilities' reconsideration of unbundled network elements rates. (orig. fld. 98-109 on 6/2/00) (bl)
7 7/00	64	Copy of Joint Appendix. (no boxes of ducments included) (bl)
7/18/00	--	Record complete for purposes of appeal. (DS)
7/24/00	--	USCA recvd cert list in lieu of record on appeal 7/20/00 (DS)

Docket No. 00-2000

IN THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

AT&T Communications of New Jersey, Inc.,
Plaintiff

State of New Jersey Division of the Ratepayer Advocate,
Plaintiff-Intervenor

v.

Bell Atlantic-New Jersey, Inc., and
The New Jersey Board of Public Utilities, an agency, and
Herbert H. Tate and Carmen J. Armenti, in their official capacities as Commissioners of the Board of Public Utilities,
Defendants.

On Appeal from an Order of the
United States District Court, District of New Jersey

APPENDIX OF APPELLANT NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

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November 20, 2000

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